

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.) No. 4:04CR00298 ERW
)
 RICHARD RUSSELL,)
)
 Defendant.)

SENTENCING MEMORANDUM

On January 12, 2005, the United States Supreme Court consolidated two cases, *United States v. Booker* and *United States v. Fanfan*, and handed down its opinion reported at 2005 WL 50108. The Court held that the Federal Sentencing Guidelines are no longer mandatory and are advisory. However, District Courts are bound to consider the Guidelines and take them into account when sentencing.

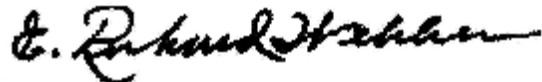
I believe that all parties have an interest in knowing, to the extent possible, predictability of a judge's view in sentencing practices. I agree with Congress' view of the need for uniformity in sentencing practices. The new "Standard of Review" under Booker/Fanfan is "Reasonableness," not *de novo*. I will consider all factors, those before and after a conclusion of guilt, to the extent that is lawfully permitted. I shall consider all elements of the plea agreement, when a guilty plea is entered, reviewing what each party is gaining and relinquishing. In fashioning a reasonable sentence, I shall consider and be influenced by the United States Sentencing Guidelines, in determining whether an intended sentence falls within the Guideline range and ultimately is a reasonable sentence.

More particularly, this Court, in determining the particular sentence to be imposed, shall consider the following factors from 18 U.S.C. § 3553(a)(Supp. 2004)--

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) the need for the sentence imposed--
 - (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
 - (B) to afford adequate deterrence to criminal conduct;
 - (C) to protect the public from further crimes of the defendant; and
 - (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

- (3) the kinds of sentences available;
- (4) the kinds of sentence and the sentencing range established for--
 - (A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines--
 - (i) issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and
 - (ii) that, except as provided in section 3742(g), are in effect on the date the defendant is sentenced; or
 - (B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994(a)(3) of title 28, United States Code, taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28);
- (5) any pertinent policy statement--
 - (A) issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and
 - (B) that, except as provided in section 3742(g), is in effect on the date the defendant is sentenced.
- (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and
- (7) the need to provide restitution to any victims of the offense.

Dated this 26th Day of January, 2005.



E. RICHARD WEBBER
UNITED STATES DISTRICT JUDGE